

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

November 4, 2008 Session

**IN RE: ESTATE OF FLORA ETTA LEADBETTER, DECEASED**

**Appeal from the Chancery Court for Knox County**  
**No. 64317-2     Daryl R. Fansler, Chancellor**

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**No. E2008-00681-COA-R3-CV - Filed October 29, 2009**

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More than one year after the death of Flora Etta Leadbetter (“Deceased”), the State of Tennessee *ex rel.* Bureau of TennCare (“the Bureau”) filed a complaint seeking to have the Trial Court appoint an administrator for the Estate of Flora Etta Leadbetter (“the Estate”). The Trial Court appointed a personal representative of the Estate. The Bureau filed a claim against the Estate seeking to recover monies paid for medical assistance and services provided for Deceased. The personal representative of the Estate filed a notice of insolvency and an exception to the Bureau’s claim. The Trial Court heard argument on the exception and then entered its order on February 27, 2008 finding and holding, *inter alia* that the Bureau’s claim is “barred, disallowed and for nothing held” and that the personal representative was authorized to close the Estate without securing a waiver or release of claims from the Bureau. The Bureau appeals to this Court. Pursuant to the Supreme Court’s Opinion, *In re: Estate of Martha M. Tanner*, M2006-02640-SC-R11-CV, 2009 WL 3191703 (Tenn. 2009)<sup>1</sup>, we vacate and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; and L. Vincent Williams, Deputy Attorney General; for the Appellant, Tennessee Bureau of TennCare.

Thomas Privette, Jr., Knoxville, Tennessee for the Appellee, Estate of Flora Etta Leadbetter, Deceased.

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<sup>1</sup> At the time this Opinion was filed, the citation numbers for the Southwest Reporter had not yet been assigned to *In re: Estate of Martha M. Tanner*.

## MEMORANDUM OPINION<sup>2</sup>

The parties stipulated to the relevant facts in this case as follows. The Deceased died on March 2, 2003. She was over the age of 55 at the time of her death and had begun receiving assistance for medical costs from the Bureau on August 14, 1998. The Bureau and the Deceased had no written contract. The Bureau paid benefits for the Deceased through June 6, 2003, and sought reimbursement for services through and including the date of her death totaling \$118,119.43. At the time of her death, the Deceased had no surviving spouse, no children under the age of twenty-one, and no children who were blind, or permanently and totally disabled.

The Bureau initially filed a petition seeking to open administration of an estate for the Deceased on October 10, 2005. An order admitting Deceased's Last Will and Testament to probate and appointing William Leadbetter as the Personal Representative of the Estate was entered April 9, 2007. Letters Testamentary were issued to William Leadbetter ("Personal Representative") on April 18, 2007. The Notice to Creditors was first published on April 17, 2007. The Bureau received an Actual Notice to File Claim and a copy of Notice of Publication on April 27, 2007. On June 25, 2007, the Bureau filed a claim against the Estate for \$118,119.43 for reimbursement of medical assistance paid. The Personal Representative filed an exception to the Bureau's claim. On July 26, 2007, the Bureau filed an Amended Claim, to which the Personal Representative also filed an exception.

The Trial Court heard argument on the exception and then entered its order on February 27, 2008 finding and holding, *inter alia* that the Bureau's claim is "barred, disallowed and for nothing held" and that the personal representative was authorized to close the Estate without securing a waiver or release of claims from the Bureau. The Bureau appeals to this Court.

Although not stated exactly as such, the Bureau raises one issue on appeal: whether the Chancery Court erred when it denied the Bureau's claim because the claim was filed more than twelve months after Deceased's death and ordered the Estate be closed without a waiver or release of claims from the Bureau. The Estate requests that we declare this appeal frivolous.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

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<sup>2</sup> Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

Our Supreme Court recently analyzed the relevant law with respect to the exact issue now before us in this appeal and has instructed:

Section 30-2-310(b) creates a general one-year statute of limitations on state claims against an estate, except claims for taxes. Section 71-5-116(c), however, imposes a duty on the representative of an estate to actively seek a release or waiver of any “medical assistance correctly paid,” 42 U.S.C. § 1396p, owed under the TennCare program. Because Mr. Tanner did not do so, and no waiver or release has issued, the Bureau was empowered under the terms of the applicable statute, as then written, to file the claim beyond the one-year period of limitation. At least until the first day of January, 2007, when the most recent amendment took effect, claims by the Bureau were not subject to a one-year statute of limitations, regardless of whether it received a notice to creditors.

*In re: Estate of Martha M. Tanner*, M2006-02640-SC-R11-CV, 2009 WL 3191703, at \*16 (Tenn. 2009).

In *Estate of Tanner*, our Supreme Court noted that Tenn. Code Ann. § 71-5-116 was amended effective January 1, 2007, but applied the version of the statute in effect at the time of Ms. Tanner’s death. *Id.* at \*4. As was the case in *Estate of Tanner*, the Deceased in the case now before us on appeal died prior to the January 1, 2007 amendment of Tenn. Code Ann. § 71-5-116. The version of Tenn. Code Ann. § 71-5-116 in effect at the time of Deceased’s death is the same version as applied by our Supreme Court in *Estate of Tanner*. Given this, we hold that it was error to deny the Bureau’s claim and order the Estate closed without a waiver or a release of claims.

We vacate the Trial Court’s February 27, 2008 order and remand this case to the Trial Court for further proceedings consistent with this Opinion and the Supreme Court’s Opinion of *In re: Estate of Martha M. Tanner*, M2006-02640-SC-R11-CV, 2009 WL 3191703 (Tenn. 2009), and for collection of the costs below. The costs on appeal are assessed against the Appellee, Estate of Flora Etta Leadbetter, Deceased.

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D. MICHAEL SWINEY, JUDGE